Johnson County / P.P.M.E. Local 2003 (Roads)

CEO 345
SECTOR 3

Iowa Public Employment Relations Board
Report of Fact Finder

Johnson County (Secondary Roads Unit)

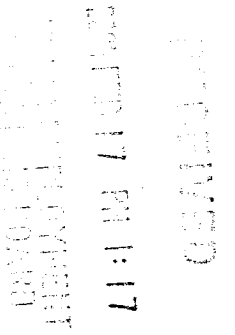
and

Public Professional and Maintenance
Employees, IUPAT, Local 2003

Fact Finding Hearing February 4, 2004

Appearing for Union: Joe Rasmussen,
Business Representative

Appearing for Employer: Judith Perkins, consultant
and Lora Shramek, Administrator, HR



Introduction

Under the authority of the Iowa Public Employment Relations Act, Code of Iowa Chapter 20, section 20.21, the undersigned was appointed fact finder to conduct a hearing and "make written findings of facts and recommendations for resolution of the dispute" between Johnson County ("Employer") and the its secondary roads maintenance employee union, PPME, Local 2003, ("Union"). The parties timely exchanged their final proposals prior to this six hour hearing at which each party was competently and professionally represented. Testimony was taken under oath and multiple exhibits submitted. Arguments by the parties have been carefully considered, taking guidance from those factors set forth in Iowa Code 20.22 (9) as well as other relevant factors as further discussed.. The statutory factors are

a) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts
b) Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved
c) The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services
d) The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Issues at Impasse

The County and Union are at impasse on the following mandatory bargaining issues: A) job posting B) overtime compensation, C) holidays (personal days) D) leaves of absence E) health insurance and F) wages and job classification. Their respective precise positions are set forth below.[1]

Background

Johnson County is the fifth largest Iowa County, based upon a 2000 census population of 111,000. The county is governed by a five member Board of Supervisors, as well as other elected officials. Its 474 employees include non represented employees (192) and members of seven bargaining units. The PPME local represents 38 secondary roads employees and-- under separate contracts-- 64 sheriff employees and 71 Administration employees. AFSCME represents 44 employees in Ambulance, 41 in "SEATS" (transportation) and 24 in Social Services.

The County has 909 miles of secondary roads and PPME Local 2003 on behalf of the Secondary Roads Unit has been bargaining with the County since 1975. Five agreed comparable counties were utilized for purposes of this proceeding: Linn, Scott, Black Hawk, Dubuque and Clinton.. They were selected because along with Johnson County they are among the ten largest counties in the eastern third of the state, and all contain a college or university (albeit not a state

[1] The Union sought for this fact finder to be informed of a matter falling outside of her jurisdiction, but which reflects the tense relationship between these parties. It informs me–and the employer does not deny–that after last year's fact finding, the employer removed the paid uniform allowance (a permissive item) from the contract, causing a "contractual loss of at least $400 per employee" which was part of the employees' economic package." The Union further reports that the employer "has identified the subject of the employees' right to grieve discipline and discharge which has been in the collective bargaining agreement since its inception" as a permissive item that it may seek to strip from this next contract. The Union describes this as "a negotiation strategy of extortion" and "urges this hearing officer to keep this outside activity in mind when ruling on the mandatory subjects." The potential loss of binding arbitration after 25 plus years appears to refer to discipline cases, but would have a huge impact on morale and on the significance of one of the key contract protections

university such as the University of Iowa in Iowa City). This same comparability group was utilized in last year's impasse proceedings between the parties. There is no dispute as to their use here, but some notable distinctions between them and Johnson county will be raised where relevant..

The Union notes that "fueled by low interest rates and job growth, Johnson County has experienced a boom in home building and new businesses" and "leads the state by a wide margin in a Census Bureau study of property valuation growth between 1961 and 1991 at nearly twice the rate for the rest of the state." It notes that the County has the lowest unemployment rate in its comparability group and that a "corridor" is developing between Iowa City and Cedar Rapids with workers traveling between them and residential development in those formerly rural areas booming. The Union asserts, and the record reflects, that the County has a fiscal policy of "holding taxes down and deliberately spending down reserves" However, the state legislature ended its former program of direct appropriate for property tax replacement (last year the sum of $730,652 was received for fiscal 2002.) The County stresses that "even faced with" an "expected reduction in state reimbursement for valuation reductions" of between $400,000 and $800,000 it is "still offering the Union a competitive package placing a substantial increase in the base wage that exceeds the cost of living and maintains incumbents in their positions when compared with like employees in similarly situated counties" The County–which is also self insured as to medical coverage for all of its employees--does not claim an inability to pay.

ISSUE #1-TRANSFER PROCEDURES: Article 5: Job Posting

The Union seeks to strengthen a seniority right ("add transfer rights") for employees already holding a job classification when that classification is posted as vacant in a different district. The current contract language (which the Employer proposes to retain unchanged) states

> No permanent vacancy or newly created job classification in the bargaining unit shall be filled by hire until such vacancy has been posted on all union bulletin boards for a period of 5 working days and present employees in the bargaining unit have had the opportunity to apply for such position by submitting a Job Interest Form and have had their applications considered. Written notification will be given to all unsuccessful bargaining unit applicants within 5 days following selection. Qualified applicants outside of the unit may be considered by the employer in determining the successful applicant. Where qualifications are equal, bargaining unit seniority shall govern.

The Union proposes that the language read

> In job classifications which have assigned geographic districts, employees currently in that job classification may request a lateral transfer from one district to a different district. The most senior employee's transfer request shall be granted before other employees are considered for vacancies in that job classification pursuant to the above bidding procedures, unless the Engineer provides written just cause for denial of the transfer

request.

Secondary road employees work out of an assigned "shed" or district. There are five districts, generally with two employees in each district. Some districts have more than one shed. Employees report to their shed to then take equipment from the shed onto their assigned routes. They can also be sent out to assist another shed. . The distance employees travel to work is of concern in this wide spread operation. The Union asserts that favoritism is exercised, rather than a bona fide qualification comparison. The problem arose back in 1999 when a road grader ("maintainer operator") sought a vacancy that opened in a different shed and a younger (more junior seniority) applicant was selected. That grievance was not settled (as to this issue) in a PERB mediation. The same request as here made for the seniority preference was presented to last year's fact finder and arbitrator who did not grant it.

What the Union seeks is a very common use of seniority. This impasse item does not pertain to application by the employee for a **different** position from the one he or she already holds. The Union seeks to give to an incumbent of the classification with the greatest seniority (as against internal applicants from the same or other classifications or external applicants) the right to move to that same job, but in a district more desirable to that employee, absent a "just cause" for the denial. The "just cause" determination would need to be provided in writing by the engineer.

The County opposes what it terms "adding the mandated transfers between geographical districts by seniority only, without regard of (sic) the interested employees' qualifications." The Union, however, in response to this concern, has inserted language by which the Engineer could select other than the most senior incumbent applicant where he provided written "just cause" for his denial of the senior applicant.. Very comparable language to what the Union seeks is contained in two other PPME contracts. The Administration contract specifically provides that "an employee requesting a transfer within that classification shall be granted the request unless the department head can provide just cause for denial...." (Ux 19). The Sheriff's PPME contract also allows "award of transfer requests..on the basis of greatest.....seniority, provided the county sheriff can deny a request for just cause." Thus there are two internal comparable allowing this very common use of seniority and providing an "out" as the Union proposes here.

Part of the answer–and problem–is found in the testimony of County Maintenance Engineer Hackathorn who said that under current practice "anyone can apply for" a posted vacancy and explained that he discusses the applicants with his maintenance supervisor and "we discuss what we know." Applicants are asked to run the equipment used on the job and "if we have two people who perform equally well, we give it to the senior person, if both have good work record and skills and interview." He also stated that "a lot of what goes on is personality. It is a close relationship, it is like a marriage, you gotta match personalities also." This described procedure of matching "personalities" to decide who is better "qualified" is evidently applied even between persons **already doing the work.** "Personality matching" is an enormously discretionary

and unknowable and potentially abusable "factor" for evaluating "qualification."

This is a minimally qualified job and one appropriate for use of seniority absent significant performance history problems or lack of skills. And such problems presumably would have been revealed or addressed via progressive discipline. Transfer requests are not appropriately the opportunity for imposition of indirect discipline via a refusal of the request.. I do not agree that the topic needs no new language, or with the reason given by last year's fact finder that there is recourse via the grievance procedure where "an employee disagrees with the County's assessment of relative qualifications" . To need to file a grievance to find out why a senior man already holding the classification did not get it is onerous, delaying and potentially costly if pursued to arbitration.

I recommend a change in language to reflect the right to some meaningful seniority preference and to also put some controls on what is used as a factor in considering "equal qualification." Again, this is a matter where County seeks to be able to compare "qualifications" of an employee already performing satisfactorily in the same job classification with others who may never have held it. Except in egregious exceptional circumstances, the use of pure seniority to move to the same job in another district would not seem to call for a comparison of qualifications with outside applicants.

The County argues (as it did last year) that there is no problem to be resolved in that there has been either the one known incident, or at most a second (and indeed less clearly applicable set of facts) occasion where seniority was not the basis for the selection. The county argues that where different equipment is used in different districts employees from one district could fail to be proficient on the equipment in the District with the opening, yet the County "would have no choice in the matter..." of whom to select "if the Union proposal were granted." However, the County would not in such case lose its discretion because a comparative inability to operate the machinery does describe a "just cause" for not selecting the senior incumbent applicant.

As for comparables, there is language in other PPME contracts stating what the Union seeks here. And the concept already exists in the expiring contract: "where qualifications are equal bargaining unit seniority shall govern." The problem is that two sentences earlier in this same clause it states "qualified applicants outside of the unit may be considered by the employer in determining the successful applicant." The earlier sentence very arguably defeats or negates the apparent promise that "where qualifications are equal, seniority shall govern."

With the slight modification I have inserted, I find that the Union proposal gives meaning to the important union benefit: seniority. An individual who seeks to move to a different district and who has been performing to job standards, and can operate the equipment in the new district, and who has put in the time with this employer in order to acquire more senior status would get the benefit of his or her years of experience and longer employment relationship. And there are internal comparable in this employer possessing the requested transfer preference. No external comparable have been submitted. Finally, the employer will not be relinquishing its right to

"determine and implement methods, means, assignments and personnel."

For all said reasons, I recommend a modification of Article 5 , adding bold face language so that it would now read

> In job classifications which have assigned geographic districts, employees currently in that job classification may request a lateral transfer from one district to a different district. The most senior employee's transfer request shall be granted before other employees are considered for vacancies in that job classification pursuant to the above bidding procedures, unless the Engineer provides written just cause for denial of the transfer request.("**Just Cause for denial" includes the applicant's demonstrable lack of necessary skills to perform the work in the hiring District.**)

ISSUE 2: OVERTIME COMPENSATION

The current contract language, which the Employer seeks to retain, states

> 7.2 Time and one-half the employees regular hourly rate of pay shall be paid for work performed in excess of forty (40) hours in any work week. Employees may elect per payroll period by so indicating on the employee's time sheet to receive overtime compensation in either cash payment or compensatory time off, except in the month of December when all overtime worked will be compensated in cash payment....Compensatory time off shall be at the rate of one and one half-hours of compensatory time for one hour of overtime worked. The use of compensatory time off shall be scheduled with the employee's supervisor's permission. Employees may accumulate and use up to sixty (60) hours of compensatory time per calendar year.. Any compensatory time not scheduled by December 1 for use by December 31 of each calendar year shall be paid to the employee in the last paycheck in December....

The Union seeks to change the underlined sentence above to read "Employees may accumulate and use up to eighty (80) hours of compensatory time per calendar year."

The Union obtained, in last year's impasse proceedings, an increase in compensatory time to the present total 60 hours. That fact finder had recommended the increase from what was then a limit of 36 hours that could be accumulated.. The basis for her recommendation was that it was a "modest" request in view of the fact that only one of the comparison counties had fewer hours that could be accumulated and that the lower total County's employees could use and reaccumulate their hours again up to their lower cap..These parties had accepted that fact finder recommendation prior to arbitration

Thus the current sixty hours benefit is a new benefit in that only a year of experience has

passed, yet the Union now seeks to increase the available compensatory time to 80 hours. In support of its proposal it notes that Johnson county employees, by not being able to "re-accumulate" their compensatory time after using some of it, "actually have the least amount of comp time for actual use in the comp group." The comparable chart shows that there is a greater maximum accumulation in Black Hawk (80) and Clinton (120). One County (Linn) has no limit (other than as set by the Fair Labor Standards Act) and two other counties have nearly the same or less (64 and 40) as Johnson County. As Johnson does, two others require use or cash out and do not let the hours be added back (Linn and Clinton). One allows a partial carryover (Scott: 40 hours). The high "comp group average" of 100 hours is affected by the fact that Linn County has only the federal limit (240) and Clinton County 120 hours. In reality, Johnson County, while fifth highest of its group, is just four hours behind the fourth highest; it also has, as discussed below, a very generous total leave policy, giving more total paid leave than all but one of the other counties,

The undersigned has never seen a request for increased compensatory time posed as a "comparable." Such a benefit is also tied in to issues of staffing, shift demands, job duties and need for actual persons on duty. I find relevant the County argument that there is no indication that the 60 hours so recently obtained by members has not been not sufficient. A chart of employee use in fact reveals that the hours have not been accumulated to the present limit, nor has the present maximum been used (i.e. a zero balance shown).. The Union argues that there is a "savings" to the County because it would not have to "pay overtime in cash;" however, the county may not value the cash savings as against having personnel on the roads. The county has charted actual use of compensatory time of 33 members of the Unit. Only one employee accumulated 60 hours, and many of them used less than half of sixty hours. The chart (Employer Ex 9) does not reveal that the employees' "need to take time off the job" beyond the **aid** leave total. In fact, most of the listed employees did not either accumulate or use half of the available 60 hours per year. This either reflects that the overtime cash pay option was more appealing, or that there was not so much overtime available as to cause the opportunity to accumulate compensatory time even up to the new limit.

Those employees at the top of the graduated vacation tier have only 205 regular work days in this unit (based on the maximum (25) vacation days, the maximum (18) annual sick leave days and the additional paid holidays (12). Leaving aside the allowed "comp time accumulation," when the total paid time off (vacation, holiday and sick leave) compared within the comparability group, Johnson County is at the top (55 days) as is one other county. All the rest have lower total leave time available.

The ability to take greater amounts of leave is traditionally tied into years on the job. The need for active presence at work for this group of employees is tied not only to the crucial nature of their job, but to the fact that they work in two man crews at least part of the time. The Union argues that "younger employees with little vacation time need the comp time option to at least equal two work weeks." However, there is no indication what number of "younger" employees are deprived of such minimum two weeks off. Moreover, this contract gives employees two weeks vacation during the "second through fourth years of employment." Starting with the fifth year,

employees receive three weeks of vacation. This essentially negates the Union's concern for "younger employees." The two weeks available after one year and three weeks after four years is in addition to the present eleven holidays and one personal day. A second personal day is another issue discussed, and recommended, below.

The present allowance of 60 compensatory hours to be used per year provides an additional one and a half weeks that can be taken off in addition to vacation, holidays and personal day(s). A valid management goal is to control having sufficient employees on the job. Even while supervisors can make decisions as to when to allow comp time off, they would not be able to deny the use at some point in the year. The County has a valid management-based interest in having its road maintenance employees actively at work and the Union has not demonstrated at this point any hardship on employees. The time is not ripe for another increase and the necessity for it is not demonstrated.

I recommend that the existing contract language remain as is.

ISSUE 3-HOLIDAYS Article 11

The employer seeks to retain current contract language which provides for one personal day. The Union seeks an increase to two personal days. Its reasoning is that

> Rather than seek a specific set holiday for the entire bargaining unit which would impact closing the department and raising the possibility of paying premium pay if employees were called in to work, the Union is proposing a flexible day off to be decided by the employee and their department head. On average, the value of one additional day off is 7.3 cents per hour or .4% in an economic package.

The Comparable Group shows that two counties have fewer personal and holiday totals: 11 or 12 for Clinton (disputed) 11 for Scott. Johnson PPME road employees have a total of 12 now. The total is fifteen for Black Hawk and Dubuque and 13 for Linn. The County here argues that there are three counties providing more days and two providing less and that it provides "adequate time off."

The real comparability of the larger number of holidays in some of the other counties is difficult to determine without also knowing their wages, insurance, and related economic benefits, the costs that those employees assume and the speed with which they reach their various leave benefit totals. The full picture requires a look at the wages at minimum, and the insurance posture elsewhere. This request is, as the Union notes, a "straight forward economic issue" which can only be evaluated in the context of the full financial standing of these workers vis a vis their comparable group.

The internal comparables for the other Unions within Johnson County reflect that all of

them receive the same twelve personal/holiday days per year as the road employees have at present, except for Social Services, which receive 13, (for a unique\ given reason that they work with and coordinate their schedules with state employees.) The internal comparables are less strong of an argument when viewed against the poor showing of the County vis a vis its external comparables in both total holiday\leave days and especally compensatory time accumulation. While recognizing this unit's relatively high wage position–as further discussed below–I do recommend that the County add one personal day to the Union's total. This value will be accounted for in the other economic items discussed here,.including the wage increase proposals. I recommend an added personal day for this contract for a total of two personal days.

ISSUE 4-LEAVES OF ABSENCE;Article 13.3 and 13.7

The employer seeks to retain the existing language which (except for the bold) reads

13.3 Under no circumstances can sick leave be used as paid vacation or terminal leave and any violation could result in immediate discharge. Employees shall receive 25 percent of their accumulated sick leave after 20 years of continuous employment when they terminate their employment in good standing.

Sick Leave may be used for any of the following.

1) **(One day for)** Funeral of a friend **(or a present or retired employee)**
2) Pallbearer duties
3) Illness in the immediate family. "Immediate family" includes.....

....

13.7 Funeral Leave

In case of death in the immediate family of a full-time employee, paid leave may be authorized by the County Engineer. "Immediate Family" includes.....

Funeral Leave may be up to 5 days in event of death of a spouse, domestic partner or child, and up to 3 days in event of death of others in the immediate family

Only days absent which would have been compensable work days will be paid. No payment will be made during vacations, holidays, layoffs or leaves of absence other than what would have been paid absent the funeral leave. Payment will be made on the basis of the employee's normal work day's pay.

In case of death of a present or retired employee, a half day of paid absence may be authorized for employees for the purpose of attending the funeral

The Union proposes to delete the underlined sentences above in 13.7 and to add the words in bold in 13.3 use (1). Thus, as the Union proposes it, there would be **no** half day funeral leave available

for attending ceremonies\services\ events of a deceased co-worker, but a full sick leave day could be used for attending the funeral of a retired or present co-worker. This is different than a proposal made (and declined by fact finder) last year, whereby the Union sought a full day of funeral leave to attend the funeral of present or retired employee. This year, the offer is not an increase in funeral leave, but an expanded approved use of existing sick leave.

The genesis of this dispute was the death of a long ill co-worker whereby the entire group of department co-workers were invited to be honorary pall bearers and all full time unit employees attended the service. Some or all evidently took a full day off expecting to use a half day of sick leave and half day of funeral leave. There was a post event dispute, with the Engineer initially declining to allow half a day use of sick leave, as would be allowed for the funeral of a "friend." That grievance was resolved but the dispute has continued, with the employer evidently rejecting a subsequent Union offer for the employees to take a whole day out of their sick leave bank.

As the Union notes, the economic impact of the proposal is minimal although the emotional reaction has been strong. Additional sensible Union arguments include that these events are mid day, that employees have to come back to their work site to change clothes, not having their appropriate funeral attire also "works at shed." The Employer's argument made last year about the difficulty of two different leave status categories for the same leave day has been negated by this year's proposal, which would allow only use of the attendee's sick leave, with no funeral leave involved at all.

Why is the Employer rejecting the concept that a co-worker for whom an employee is willing to give up a day of sick leave was indeed a "friend?" Friendship with co-workers is a common if not universal phenomenal. If the person was not a "friend," the employee may not elect to use valuable sick leave. It is in essence self regulating; the employee could seek to only use a half day. But the problem will arise with relative infrequency and the Employer's response indeed seems morale destroying.

The concept of using sick leave to attend the funeral of a friend is already in the contract, with no time limit imposed (which could not have been the intent, in view of time limits set for family member funeral leave.) The Union suggests that for "friends" from out of town, the employer could be faced with several days use of sick leave. Its proposal corrects this significant omission, by now stating "one day" limit on paid leave for such funerals. This is a gain to the employer from an existing vague clause.

The County argues that employees "when acting as pallbearers" already get one day. But not every employee will be a pallbearer and this distinction appears absurd. The employer argument about an employee being in only one leave status is irrelevant because the Union is not proposing two different leave statuses. The Union is not asking that "an employee qualify for both sick leave and funeral leave status for the same funeral " and it is not asking for expanded funeral leave. The employer does not appear to have carefully read the Union proposal.

The fact finder last year noted the generosity of the existing funeral leave provision compared to other counties. But the Union here is not seeking greater funeral leave. It is seeking a very slight increase in the use of sick leave: for the funeral of a co-worker. The role of "external comparables" in such a limited request matter, touching only upon office relationships is less useful but in any event I note that three out of five counties state "no policy." This leaves unanswered how the matters are handled in discretionary fashion by supervisors in those counties. Clinton County allows granting of time off. Details of all actual language elsewhere were not provided.

This is an area where the advantage to morale from the Union proposal is great, the reduction in abuse of discretion by a supervisor would be useful, and the economic impact is essentially non existent. I recommend the Union language be adopted.

ISSUE 5-INSURANCE: Article 14

The present contract language at issue, which both parties seek to change, reads as follows

14.1 Health Insurance

The Employer shall pay the entire premium cost for full-time employees health and dental, including family health, but the employee shall pay the portion of the monthly premium for family dental. The employee must sign up for health and dental insurance coverage within 30 days after full-time status is attained to participate in these plans. Iowa 500 Alliance Select, or its equivalent, will be the only health insurance plan available.

The Employer proposes the following language for 14.1

All eligible employees who select county health care coverage shall be enrolled in a policy equal to that in effect on July 1, 2002 (Wellmark Blue Cross/Blue Shield Iowa 500) with the addition of an Alliance Select overlay on July 1, 2003. Effective January 1, 2005 the plan year family deductible shall become $200 aggregate and the plan year family out-of-pocket maximum shall become $1000 aggregate. Aggregate shall mean amounts accumulated on behalf of any combination of family members [2]

The employer will pay the full cost of a full-time single dental plan and the same contribution toward the family dental plan

The employer also proposes significant language change to 14.2 and also 14.5 as does the Union, as discussed below.

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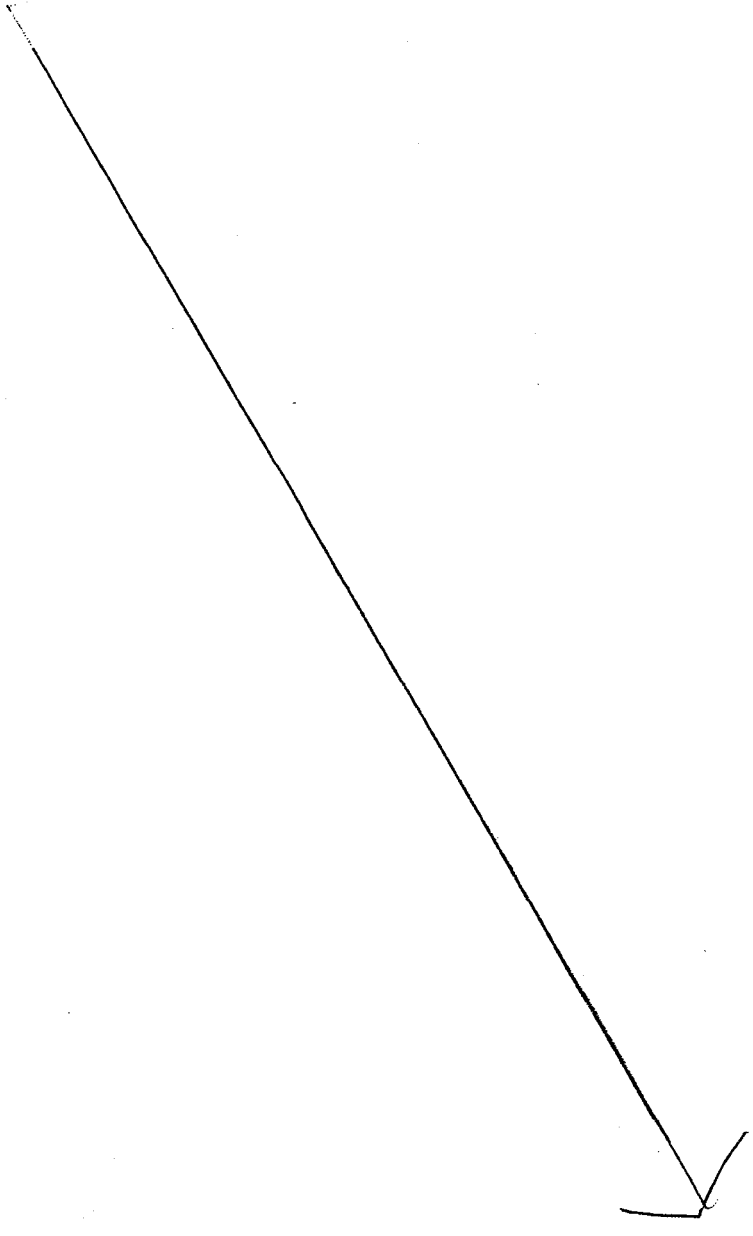
[2] I note that the Employer appears to have eliminated its reference to its paying the entire monthly premium (or any premium) for the full time employees health. But on my record, this was not the employer's intent and I have corrected this as discussed.

The Union proposes a massive restructuring of the Contract Health Insurance Language, to insert in the contract itself aspects that are now covered in the plan booklet already provided routinely but are not stated in the contract, thus opening up to future negotiation the actual elements of the plan were they listed in the contract. The next two pages reproduce the Union's proposed Health Insurance Language



ISSUE # 5 – INSURANCE

Union Position

Change Article 14, Insurance, to read as follows:

Section 14.01 – Insurance Carrier

The Employer shall have the right to select the carrier of all insurance coverages contained in this Article provided that the Union shall receive at least three (3) months advance written notice of the change, insurance specifications shall not be diminished in any way and insurance plan administration shall not be diminished in any way.

Section 14.02 – Health Insurance

All employees who select the county health care benefit plan shall be enrolled in a policy equal to that in effect on January 1, 2003 (Wellmark Blue Cross Blue Shield Alliance Select Preferred Provider Organization) subject to the plan booklet details and exceptions, and the following minimum benefits for a calendar year period. Such coverage includes chiropractic services. The Employer shall pay the entire premium cost of single and family (includes same gender domestic partner) coverage for full-time employees.

Deductible	$100 single $100 family (aggregate maximum)
	Deductible waived for routine office calls, out-patient procedures, normal newborn care, and one routine annual physical. Deductibles are the same for network or non-network providers.
Out-of-Pocket Maximum	$500 single $500 family (aggregate maximum)
	Out-of-pocket maximums include deductible amounts. Out-of-pocket maximums are the same for network or non-network providers.
Co-Insurance	90% / 10% employee in-network 80% / 20% employee non-network
Prescription Drugs	Included with medical expenses at 80/20 coinsurance. No separate deductible, out-of-pocket maximum, or co-pay.
Lifetime Maximum Benefit Per Person	$ 1,000,000 $15,000 limit on infertility services

Section 14.03 – Dental Insurance

The Employer shall pay the entire monthly single premium cost for full-time employee dental coverage. An employee selecting family dental shall pay the dependent coverage portion of the monthly premium. Dental insurance coverage shall include the following minimum benefits for a calendar year benefit period:

Check-ups and teeth cleaning	no deductible 0% employee co-insurance
Cavity repair and tooth extractions	deductible applies 20% employee co-insurance
Root canals	deductible applies 20% employee co-insurance
Gum and bone disease	deductible applies 20% to 50% employee co-insurance depending on procedure
High cost restorations (crowns)	deductible applies 20% employee co-insurance
Dentures and bridges	deductible applies 50% employee co-insurance
Orthodontics	deductible applies 50% employee co-insurance

Deductibles for a benefit period are $25 single and $75 family. The maximum benefit is $750 per eligible member for any benefit period, except orthodontics which has a $750 lifetime maximum per member.

Section 14.04 – Life Insurance

The Employer shall pay the premium for life insurance in an amount equal to 100% of an employee's annual salary rounded up to the next $1,000. The coverage shall include double indemnity for accidental death and dismemberment. This coverage will decrease when the employee retires or reaches age 65 to 67% and decrease again at age 70 to 45%.

Section 14.05 – Disability Insurance

The Employer shall pay the premium for disability insurance which provides for disability payments of 67% of the full-time employee's gross salary after a 126 calendar day waiting period. The maximum monthly benefit shall be $4,000 and the minimum monthly benefit shall be $50. The monthly benefit received is reduced by any other

income benefits, including social security disability-retirement-worker's compensation, as defined by the coverage. The maximum benefit period shall be 24 months which shall have a phased reduction beginning at age 66 to a maximum benefit period at age 69 or over to a period of 12 months. Employees may purchase disability insurance with longer-term benefit periods at the employee's cost through the county at group rates.

Section 14.06 – Worker's Compensation
Anyone injured on the job shall be paid the difference between what is paid by Worker's Compensation Insurance and regular pay for a period not to exceed one year or the length of time covered by the insurance, whichever is less.

Section 14.07 – Flexible Benefit Spending Plan

All employees eligible to participate in the health insurance program may participate at no employee administrative cost in the County's flexible benefits spending plan which, under IRS regulations, allows employees to pay for health care and dependent care from pre-tax dollars.

NEW Section 14.08 – Annuity **(see Wage Issue)**
Any employee who does not enroll in the County's family health insurance coverage shall receive a payment of fifty dollars ($50) per month toward a tax-sheltered annuity provided by the Employer. All employees are required to enroll for single health insurance coverage.

Employer Position

Double the family deductible effective January 1, 2005 from $100 to $200.

Double the family out-of-pocket maximum effective January 1, 2005 from $500 to $1,000.

Add language on both family deductibles and out-of-pocket maximums being aggregate computations, and redundant language on sharing the costs of dental insurance.

Add language that the Employer will distribute benefit plan descriptions for the various types of insurance offered by the County when they are available.

It should be noted that much of the language of the contract insurance clauses do not reveal that the County is in fact a self insured entity which pays into a reserve fund, and administers its self insurance plan through the entity "Wellmark Blue Cross Blue Shield of Iowa." The details of coverage are contained in benefit plan descriptions, but the coverage is actually county dollars. While I see references in memos supplied by the County (i.e. Berinobis at Wellmark to Lora Shramek, dated 1-31-03, County exhibit 27 and other memos) which indicate a "stop loss" program, there is no indication of any "outside" umbrella policy whereby the risk of catastrophic employee health events is shared with any other entity.

In a nutshell, the County proposes to increase the family deductible, starting January 1, **2005** to $200 per year and to double the family out of pocket maximum from $500 to $1000. The County will "continue to pay 100% of both single and family health care coverage for full-time employees." Co-insurance for PPO providers will be a generous 90/10 split with virtually all (98%) of area providers alleged to be in the PPO group. The County notes that even with the increase in deductible, it "still provides the richest health care plan in the comparability group" and the "lowest family deductible and the second lowest family out-of-pocket maximum." In light of the current medical health insurance crisis, the cost to employees in both private, and increasingly in the public sector, these are powerful arguments.

The Union asserts that it

> Proposes to maintain the current insurance plans and coverages while changing the current collective bargaining language to be more specific as to what these plans and coverages are. This change is proposed to allow the parties to effectively bargain over insurance in the future. The reality of insurance bargaining today is that the parties often negotiate over a change to a deductible or the addition/change of co-pay or a coinsurance percentage. ...the current contract language does not accommodate such bargaining proposals. The Union is not proposing any changes to the current benefits in any of these insurance programs.

The Union does not, however, agree to the employer proposed increase in deductible or in out of pocket maximum.

The employer asserts that a proposal for an "even slightly different" health plan than that administered as one plan for all county employees would, the county argues, result in additional administrative costs. The Employer asserts that the increase in costs for its FY 2005 plan year renewal will be a 6% increase "which equates to $214.56 more annually for single and $587.64 more annually for family coverage." It notes further that its "expenditures for health care coverage nearly doubled in five years." It notes that only Johnson County has not had a structure in place where the single deductible and single out of pocket maximum are not doubled for family coverage. It notes that only last year the Union had drafted–and obtained–the overlay language to state that coverage would include "an Alliance Select overlay to the Iowa 500 plan and the concept was adopted by all units to maintain the economies of scale. Now the Union is proposing to

rewrite the entire Insurance Article, including more information than was ever addressed before."

This fact finder notes there is to be no decrease in the coverage being offered to union members other than the increase in deductibles and maximum out of pocket. The Employer has posited valid reasons for these increases,: specifically, the greater projected increase in its own costs. The County also points out that it has the advantageous authority (being self funded) to make exceptions to the plan limits that are administered by its claims agent and has done so to the benefit of both employee and County (such as increasing beyond the stated limit out patient treatments and avoiding recourse to inpatient, which was not at the limit, but was not desired.). The "coverage" provided by the County is the "coverage" that is described by the named plans, which the county "is willing to put this current practice in writing." That coverage commitment addresses the Union concern, except for being nonresponsive to the Union desire to make coverage elements **not** traditionally contained in a labor contract a part of the next contract. As long as the Contract contains a commitment to the plan of current coverage, I find inappropriate to recommend a drastic change in contract structure whereby every item of the Union's long list of coverage would now be a negotiated item. I also find a strong argument to be made for keeping the same level of coverage for all of the County's bargaining unit employees, and note that the Union proposal would start a path of divergence that could later pose enormous bargaining problems as well as administrative problems.

I have examined the health care coverage comparison chart (county 31) and note that only except for Dubuque and Linn, all have higher single deductibles. Two counties have a lower out of pocket maximum for families than the new amount of $1000 proposed by Johnson County. I recommend the employer's proposed section 14.1 "Health Insurance" language proposal as recited above at page 11, including the stated increased deductibles and out of pocket, while myself adding clarification that the employer is to pay (as it does) the full time employee's health premium as well as the stated dental premium. I have added what I think was inadvertently omitted language in bold

> The employer will pay the full cost of a full-time single dental plan and the same contribution toward the family dental plan **and will pay the entire premium cost for full-time employee health.**

The Union has proposed language for its life insurance clause which appears similar albeit not fully the same as that contained in the AFSCME contract. The Union proposal seeks to continue that insurance after the employee has left the county and it calls for double indemnity, neither of which appear to be in the present Mutual of Omaha (yellow) plan booklet put in evidence and which recites that the coverage continues while the employee is active. However, that booklet is dated 1992! Does this mean the coverage has not changed? Does the booklet reflect there is actual purchased life insurance coverage rather than a self insured reserve? Such an old booklet raises serious questions about what employees are provided. I do find the existing contract clause is notably vague as to the Employer obligation for this important coverage

including how the premium is paid. I take guidance from other Johnson County approved new contracts (SEATS and AFSCME).

In the health coverage arena, the Employer has argued for consistency across all employee groups. Therefore, having reviewed other internal contracts, for Life Insurance (current 14.04) I recommend current language with the additions as noted

> Life insurance, which **shall be in the amount equal to 100% of an employees annual salary, rounded up to the next $1,000** (approximates in value the employee's yearly income) is available to every full time employee who has been employed 60 days. **Pursuant to the current contract the coverage will decrease when the employee retires or reaches age 65 and decrease again at age 70.**

The Union proposal for disability insurance states that the monthly benefit will be$4,000. That benefit amount is already contained in the "long term income protection" booklet\certificate although the contract states a different maximum benefit of $3,000. It would appear that again, the Union seeks to make a contract floor on coverage. But here, since the contract already states the benefit in dollars, (if not the apparent correct benefit), I would recommend that article 14.2 be amended to place in it the **current** $4,000 benefit as indicated by plan documents. This does not change the structure of bargaining on disability insurance. I do not find any basis for the remaining language changes proposed for old 14.2 (Union renumbered it 14.05) and I recommend no change other than to reflect the actual disability coverage and the decreasing coverage as addressed in other internal contracts.

Apart from the above changes, I do not recommend any change in current numbered 14.1, 14.2 or 14.3 or 14.4. No changes were proposed for 14.4 (workers compensation). The employer does not object to the Union language)"14.07") on "Flexible Benefit Spending Plan" and it is therefore recommended.

The Union proposes a completely new benefit as "14.08 "annuity." That benefit was orally argued to be a form of "pay back" for the fact that employee who does not take the County family coverage (either because single or being perhaps covered elsewhere for their health insurance (ie by a spouse) should be given some of the savings to the Employer from what it would pay if there had been family coverage. (There is also a Union sentence calling for all employees to be "required to enroll for single health insurance coverage." I find no discussion of this requirement in my notes or the written record. I consider inappropriate to require health insurance participation, despite the huge danger to any employee misguided enough to refuse this free employment benefit at the County which is worth literally thousands of dollars.) I cannot find any support for the Union claim that offering this "annuity" would "reduce the amount spent on family insurance premiums." None of the comparables offer an annuity and I do not recommend the Union proposal for such annuity.

A final section of article 14 needing recommendation is current 14.5 which as presently

worded in essence makes no sense because it implies that the County has outside insurance carriers, which it does not, at least as to health. The Union proposes full deletion, while the County proposes only adding language to promise that it will distribute benefit certificates and plan descriptions " as soon as available," an administrative act already carried out (per the union) and in any event having little basis for objection. Section 14.5 currently reads

> The county has no liability for the failure or refusal of the insurance company to honor an employee's claim or to pay benefits and no such action on the part of the insurance carrier shall be attributable to the County or constitute a breach of this Agreement by the County. The County shall be responsible for the payment of necessary premiums to purchase the insurance described above. In the event that the insurance described above is changed, the level of benefits shall be equal to or greater than the insurance described above, unless the County and the Union negotiate through impasse a different level of benefits.

The County protests the elimination of 14.5 stating that

> This section is very important as it limits the county's liability for the insurance companies actions. Honoring employees' claims that the insurance companies have denied is an additional financial liability that is unpredictable and may include litigation expenses. Removing language that states insurance companies actions do not constitute a breach of this labor agreement would imply that employees could also file grievances for claims not paid.

This county argument is inexplicable, unless the County really were still using outside carriers. At least as for health, and possibly for several other coverages, the County **is** the "carrier." And major health insurance plans contain a method to appeal coverage decisions; page 32 of the County-provided booklet sets forth the appeal procedure for denied claims for its own self insured health plan. This old 14.5 language is fully outdated. The County is only "paying premiums" in the sense of keeping the necessary reserves for funding the claims made by its covered employees plus the small administrative costs to its claim processor\consultant.. There is no hint in this section that coverage claims are now arbitrable, and that can be addressed as an arbitration clause exemption. Moreover, litigation rights of an individual cannot be waived by such a labor contract or avoided by this language. I recommend the following

> 14.5 **Where coverage is provided by an independent insurance carrier for any insurance provided herein,and so long as an appeal process is provided by that carrier,** the county has no liability for the failure or refusal of the insurance company to honor an employee's claim or to pay benefits and no such action on the part of the insurance carrier shall be attributable to the County or constitute a breach of this Agreement by the County. The County shall be responsible for the payment of necessary **and adequate reserves for all of its self insured programs as well as the** premiums to purchase the **commercial** insurance described above. In the event that the insurance described above is changed, the level of benefits shall be equal to or greater than the

insurance described **in each section of this article** above, unless the County and the Union negotiate through impasse a different level of benefits. **Any changes in eligibility for health claims made or other coverage described in this section shall be limited for the length of this contract to the levels provided by specific named plan as stated herein. For all insurance and benefit plans listed in this Article, a process shall be in place for employee appeal of denied benefits.**

ISSUE 6; WAGES and Pay Day: Article 16

The party respective positions are

Union Position

Article 16, Wages/Merit Steps/Longevity

A. INCREASE each step of Exhibit A, Wage Rates 7/103-6/30/04, by the amount of three and one-half percent (3.5%) on July 1, 2004.

B. Increase the paygrade for the job classification of Signperson effective July 1, 2004 from paygrade 5 to paygrade 6.

C. Add a new Section 16.5 entitled Payperiod and Payday, to read:

A payperiod shall be two work weeks as defined in Section 7.1. Time sheets for the payperiod shall be submitted on the Monday following the end of the payperiod, or Tuesday if Monday is a holiday. Payday shall be on Friday of the same week following submission of the time sheets, or the last workday prior if Friday is a holiday.

D. Article 14, Insurance – Deferred Compensation

Add a new Section 12.08 entitled Annuity to read as follows:

Any employee who does not enroll in the County's family health insurance coverage shall receive a payment of fifty dollars ($50) per month toward a tax-sheltered annuity provided by the Employer. All employees are required to enroll for single health insurance coverage.

Employer Position

Increase all hourly wage rates by 2.5% across-the-board on July 1, 2004.

Add a new job classification of Roadside Technician at pay grade 6.

There are in effect no comparables available at this time. Scott and Dubuque bargained multi year contracts and each obtained, for the first year, 3.5% increases. But Scott county employees pay substantial monthly health insurance premiums and are "picking up 40% of the increases." Linn, Black Hawk and Clinton remained open at time of this hearing. The Union argument (based only on Scott and Dubuque) that the "average" of its comparables is 3.5% is weak. The bargaining unit history given by the union shows the wage increases going b ack to 1988 but a) does not show for those years the County's comparative position, financial state, and in many cases these were multi year contracts. The other Johnson County contracts were multi year and are entering year two with a 3.% increase which would have been bargained last year.

The wage analysis of road maintenance personnel in the comparable counties reveals (County ex 33) that from year two on, Johnson County employees rank first forward for all years. and the difference in hourly rate is not in cents but in dollars. For example, a four year Johnson County employee earns $18.74, one to two dollars more per hour than all other groups, looking at January 2004 for the comparables, and July 2003 for Johnson County. The Operator Fabricator classification also ranks first after the first year. The leadpersons are also ranked first after six months.[3] The County does not claim inability to pay, but does show that its tax credit replacement budget will be about four hundred thousand dollars less for projected 2005 budget.

The Union concedes that the County proposal would still leave it ranking first among all comparables, but notes that the "spread" would be reduced. (" A history of relative comparability should not be changed by a neutral third party.") That is, the union seeks as "comparability" to maintain its position equally **as far** ahead of the remaining group as it has been. I find this unpersuasive. The concept of comparability is not one of being "ahead of the crowd " always by "x" percent. An analysis of requested wage increases ~~are to~~ should take many factors into account, none of them being "how far ahead" the employees have long been. The issue is whether the selected wage increase is appropriate when looked at in a

> ...Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classification involved (Iowa Code 20.22).

The Employer points out that its " 2.5% across-the-board increase over the current wage scale..is reasonable in this economy, exceeds the CPI, and maintains Johnson County's position as #1 in the comparability group. .." The CPI was 1.6 for this past year for the midwest region (Ex 36). (The Union puts it at 1.9% but did not provide the backup documentation that the County did for its number.)

Internal comparables reflect in part that the other County unions each reached three year

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[3] The County also did a calculation of "health care coverage as part of compensation" and this reduced the hourly rate in Black Hawk, Linn, and Scott.

contracts with 3% for their first year and splits in July 2005 and January 2006. Multi year contracts are commonly viewed as a basis to award a "sweetener" for the first year. (Newspaper articles suggest that in Iowa City, AFSCME employees recently agreed to 2.65 and 2.85 percent increases. Of course, their duties, relative position, and other benefits obtained were all omitted.)

The County provided a cost comparison of various economic items. It asserts that the Union's 3.5% increase proposal, along with health care coverage increases and "additional administrative costs" (which were frankly guesstimates) would be an "increase over current year" of 5.2% or $108,289, whereas its own proposal would equate to 3.0% when counting the increased cost for covering health insurance premiums and dental. This is a small bargaining unit. Looking only at the wage increase and IPERS, the difference is between $63,723 (Union) and $43,213 (County.) I supported the increased premium contribution sought by the County, and have recommended an additional personal day for the Union, which has a value to employees of the range of well over $100 to $150 each.

A final city exhibit of "Iowa Settlement Trends" shows **no** wage increases in the 3.5% range and several contracts, even multi-year, with the first year at 2.5 or 3.0. The Iowa County Sheriff Unit (a more high risk occupation) accepted 3.0 increase, the same as the first year for the multi year contracts of Johnson County AFSCME, SEATS, and Social Services. The Union, however argues that "the proper comparability group for the Roads employees are other county secondary road units, not law enforcement and not clerical employees or ambulance and bus drivers or social workers." Unfortunately, the secondary road figures are not present except for two of the counties, each with multi year contracts. And the only backed up data for the CPI reflects a 1.6 CPI, not 1.9.

Taking into account the gain to this employer of increased deductibles and out of pocket for health, and the settlement range in the County and outside which includes several (non road) units, I recommend for wage settlement an increase over 2.75% for each step of exhibit A to the contract effective July 1, 2004.

There are a few other items raised by the Union. A new position was created by the Employer –Roadside Technician–and that position was placed in a paygrade six, in the County view due to increased skills needed for that new job. The Union now requests a paygrade increase from 5 to 6 for the existing classification of "signperson." The history provided by the Union indicates that the real problem with the employer's 2002 action of creating a "roadside technician" was that there were credentials\licenses\certifications for this job which members of the Unit lacked. But of course that would explain the paygrade 6 selected by the employer. The Union's argument that "if the roadside tech is going to be paid at pay grade 6, then the signperson should also be paid at pay grade 6." It does not inform me of why the signperson duties or qualifications are or would be comparable. My examination of the two job descriptions would appear to support the distinction in pay grade. I also am of the view that interfering in job classification, which can be a complex schema involving many other positions, is not appropriate for a fact finder in an interest arbitration. I encourage the parties to bargain in good faith.

My recommendation is no change in contract language as to pay grades got signperson or roadside technician.

Finally, the Union proposes adding a new section 16.5 "Payperiod and Payday"

> A payperiod shall be two work weeks as defined in Section 7.1. Time sheets for the Payperiod shall be submitted on the Monday following the end of the payperiod, or Tuesday if Monday is a holiday. Payday shall be on Friday of the same week following submission of the time sheets, or the last workday prior if Friday is a holiday.

The rationale for locking the employer into payroll days is "to achieve consistency with the other bargaining units who are going through impasse procedures" and that "Johnson County has a variety of pay practices" with some departments paying employees the same week they turn in time sheets calling for corrections in the next pay day. But the Union also acknowledges that the "Roads bargaining unit is not on this arrears system of pay....." Rather, it wants to avoid an undescribed "accounting fiasco." On this issue the County replies that the union-proposed language " is too confining" and that it too would like a "uniform payroll schedule throughout the County. The vast majority of employees are paid with two week pay periods...pay period starting and ending dates in the county's payroll software can only reflect one set of dates. Secondary roads is out of step with the majority of the County."

The record is simply insufficient as to the nature of the problem (or non problem, which the Union wants to protect) for a fact finder recommendation. Payperiods and payroll timing are well served by consistency and by the parties own comments, this issue is being looked at in other PPME fact findings. There can be no loss of pay of course to employees from adjustment of payperiods and I see no problem for which new contract language is needed. The requested Union proposed new Section 16.5 is not recommended.

SUMMARY OF RECOMMENDATIONS

Issue 1 Transfer Procedures: I recommend the Union proposed modification of Article 5 , with added bold face language so that it would now read

> In job classifications which have assigned geographic districts, employees currently in that job classification may request a lateral transfer from one district to a different district. The most senior employee's transfer request shall be granted before other employees are considered for vacancies in that job classification pursuant to the above bidding procedures, unless the Engineer provides written just cause for denial of the transfer request.("**Just Cause for denial" includes the applicant's demonstrable lack of necessary skills to perform the work in the hiring District.**)

Issue 2-Overtime Compensation: I recommend that the existing contract language remain as is.

CERTIFICATE OF SERVICE

I certify that on the 13th day of February 2004, I served the foregoing Report of Fact Finder upon each of the parties to this matter by (~~personally delivering~~) (xxxx mailing) a copy to them at their respective addresses as shown below:

Lora Shramek, HR
Johnson County
913 South Dubuque St
Iowa City IA 52240

PO Box 69;Alburnette IA 522

Joe Rasmussen Bus. Rep.
Public Professional and Maintenance Employees

I further certify that on the 13 day of February 2004, I will submit this Report for filing by (~~personally delivering~~) (xxxx mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.

Ellen J Alexander, Fact-Finder

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